IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.1.2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.16878 of 2003

Dr.Biju Paul .. Petitioner

vs.

1. Tamil Nadu Medical Council
   D.Block, 100, Feet Road,
   Vadapalani,
   Chennai - 600 026.

2. Tamil Nadu Dr. M.G.R. Medical
   University,
   No.69, Anna Salai,
   Guindy,
   Chennai - 600 032.

3. Christian Medical College,
   Thorapadi, Vellore - 632 002. .. Respondents

Writ petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.R.Subrahmanyam

For respondents : Mr.K.Sridhar for R1
Mr.M.Vellaisamy for R2
Mr.Krishna Srinivasan
for M/s.S.Ramasubramaniam &
Associates for R3

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O R D E R

The writ petition has been filed for the issuance of a writ of mandamus to direct the third respondent through the respondents 1 and 2 to issue the necessary certificates, more particularly, the Medical transcript, certificate of clock hours, conduct certificate, reply to the request letter of Educational Commission for Foreign

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Medical Graduates for confirmation, completion of M.B.B.S. course certificate.

The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner was admitted to the M.B.B.S. Course during the month of September, 1993, in the third respondent College. He had successfully completed the M.B.B.S. Course in the month of January, 1999. The second respondent had also issued an M.B.B.S. degree certificate to the petitioner. Following which, the petitioner had registered himself with the first respondent as a registered medical practitioner.

3. The petitioner has further stated that after his completion of the M.B.B.S. Course, the third respondent College had refused to issue the necessary certificates to him, which the third respondent College was obliged to issue. The petitioner was sponsored for the M.B.B.S. seat in the third respondent College by M/s.N.M.Wadia Hospital, Pune, which is a private Mission Hospital, being a part of the Pune Christian Medical Association. The Pune Christian Medical Association is a part of the Church of North India, which is a member of the governing council of the third respondent College. The petitioner had written an entrance examination conducted by the third respondent College during the month of May, 1993, and having qualified in the written examination and in the interview conducted thereafter, he was offered a medical seat in the M.B.B.S. Course in the third respondent College. At the time of admission in the said Course, there was a pre-condition for the candidates under the sponsorship to sign an agreement and the sponsorship bond with the third respondent. The agreement and bond stated that after the successful completion of the course, the candidates shall serve in a Hospital or an institution, as directed by the sponsoring body or by the Principal of the College, for a period of not less than two years, immediately, following the completion of the M.B.B.S. Course as a "service obligation". Since the petitioner had been sponsored by M/s.N.M.Wadia Hospital, Pune, he was asked to sign the agreement and bond with the third respondent. After the successful completion of the Course in the month of January, 1999, the petitioner was deputed to work at the M/s.N.M.Wadia Hospital, Pune. Accordingly, the petitioner had taken up the assignment, on 4.2.1999.

4. The petitioner was made to suffer without regular salary being paid by the said Hospital and he was made to vacate the accommodation provided by the Hospital. The working conditions in the Hospital were very poor including non-availability of the power supply, attributable to the failure of the Hospital to pay the electricity bills. The petitioner was made to bear extreme humiliation by the Hospital Authorities and his services were terminated by the Hospital Management from 16.9.1999 by a letter, dated 15.9.1999, even though the petitioner was ready and willing to perform his part of the obligation under the agreement. 5. The

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petitioner had made a representation, dated 11.6.2001, to the third respondent to issue the necessary documents for the course completed in the third respondent College. By a letter, dated 19.6.2001, the third respondent College had stated that due to the non-completion of the service obligation, the documents requested by the petitioner cannot be given. Since the petitioner needed the documents for further studies abroad, the Educational Commission for Foreign Medical Graduates had written to the third respondent College for confirmation, by their letters of request, dated 11.6.2001 and 26.4.2002. However, the third respondent College had not replied to the said letters of request. Therefore, the petitioner had made a written request, on 5.2.2003, requesting the third respondent to issue the following certificates, (1) Medical Transcript (2) Certificate of clock hours (3) Conduct certificate (4) Reply to the request letter of Educational Commission for Foreign Medical Graduates for confirmation (5) Completion of the M.B.B.S. Course certificate. The third respondent, however, has refused to issue the said documents, due to which, the petitioner has been put to considerable loss and hardship.

6. In the counter affidavit filed by the first respondent, it is stated that the first respondent is a statutory authority constituted under the provisions of the Tamil Nadu Medical Registration Act. The main functions of the first respondent relate to registration of the Allopathic Doctors, publishing the Medical Registers and the Disciplinary jurisdiction over the Doctors. The first respondent has no role or connection with the act of issuing the documents requested by the petitioner and it is beyond the scope of the powers vested with the first respondent to interfere with the agreement made between the petitioner and the third respondent College. There is no statutory duty cast on the first respondent to issue the direction to the third respondent College to issue the certificates sought for by the petitioner.

7. A counter affidavit has also been filed on behalf of the third respondent College, in which, it is stated that the third respondent College is a Society registered under the Societies Registration Act. It is not discharging any statutory duties and therefore, it is not amenable to the writ jurisdiction under Article 226 of the Constitution of India. Further, the writ petition is barred due to laches as having completed the course in the year 1999, the petitioner has filed the present writ petition only in the year, 2003, praying for the issuance of the certificates mentioned therein.

8. It is the further case of the third respondent that the certificates sought for by the petitioner are not statutorily required to be given and all the certificates, which the third respondent has to receive, has already been given to the petitioner, for which he has acknowledged. Therefore, there is no statutory duty

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or obligation cast on the third respondent to issue the certificates, as required by the petitioner. The Tamil Nadu Medical Council Registration Certificate, Original internship Certificates, Provisional Pass Certificate and date of Birth Certificate were sent to the petitioner by registered post with acknowledgment due, as early as 4.3.1999. The conduct and course certificates were also issued, on 23.4.1998. Even though various allegations have been made by the petitioner against the Pune Christian Medical Association, it has not been made a party in the present writ petition nor M/s.N.M.Wadia Hospital, Pune, has been made a party. Therefore, the writ petition is liable to be dismissed for non-joinder of the necessary parties.

9. It has been further stated that the petitioner was a candidate sponsored by the Pune Christian Medical Association, in the year 1993, and the petitioner being a sponsored candidate, had signed an agreement under which the petitioner had undertaken to serve in the Hospital of the sponsoring body or any other Institution approved by the constitutional body, for a period of not less than two years following his graduation. Only on such undertaking by the petitioner, he was given admission in the third respondent College. Only under extraordinary circumstances, the bond could be relaxed, on payment of a proportionate amount as stipulated. In the case of the petitioner, no such extra-ordinary circumstances existed, under which the bond could have been relaxed. The petitioner, having completed his course in the month of January, 1998, did his internship for one year, till the year 1999. As per his bond, he has worked in the M/s.N.M.Wadia Hospital, Pune, from 4.2.1999 and his services were discontinued from 16.9.1999. Having completed seven months in the Hospital, the petitioner had failed to comply with the obligations under the bond. Therefore, the petitioner is not entitled to the relief claimed by him.

10. Heard the learned counsel appearing for the petitioner as well as for the respondents.

11. The learned counsel appearing on behalf of the petitioner has submitted that the non-performance of the service obligation agreed by the petitioner, by way of an agreement under bond, was not due to the petitioner but was due to the failure of M/s.N.M.Wadia Hospital, Pune, to provide him with sufficient opportunity to perform his functions as a Medical Practitioner. Due to the non-issuance of the certificates as requested for, the petitioner has been put to irreparable loss in the career prospects and has been subject to severe mental agony. The third respondent College is under an obligation to issue the certificates as required by the petitioner and being a public body, refusal to issue the certificates would amount to infringement of the petitioner's fundamental rights.

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12. The learned counsel appearing on behalf of the petitioner had also relied on the following decisions in support of his contentions.

12.1. In EXECUTIVE COMMITTEE OF U.P. STATE WAREHOUSING CORPN., LUCKNOW Vs. CHANDRA KIRAN TYAGI (AIR 1970 S.C.1244), the Supreme Court has held that normally a contract of personal service will not be enforced by an order for specific performance nor will it be open for a servant to accept the repudiation of a contract of service by his master and say that the contract has never been terminated. The remedy of the employee is a claim for damages for wrongful dismissal or for breach of contract.

12.2. In re ANANDAN NAMBIAR (AIR (39) 1952 MADRAS 117), this Court has held that "Article 226 of the Constitution of India confers on the High Court extremely wide powers of interference and a corresponding extremely heavy burden of responsibility. The framers of the Constitution could never have contemplated High Courts constituting themselves on applications by all sorts of aggrieved persons into inquisitorial tribunals supervising, criticising, modifying or cancelling the actions and orders of different departments of executive authority, institutions, public bodies and last but not least of the legislatures as regards their internal affairs which are controlled by the Speaker and the House and its committees. It is only in exceptional cases that writs under these wide powers "for any other purposes" can be issued, such as for instance when there has been a clear violation of statutory law, when principles of natural justice have been violated or perhaps where there has been mala fide discrimination against an individual to the detriment of his rights. It is impossible to define with exactitude the cases in which Article 226 of the Constitution can be rightly invoked. They should be comparatively exceptional and very few."

12.3. In K.SHEKAR Vs. V.INDIRAMMA AND OTHERS ((2002) 3 SCC 586), the Supreme Court has held as follows:

> "21. We can take judicial notice of the fact that NIMHANS is an institution of repute. It has already been so recognised by this Court in B.R. Kapoor v. Union of India (1989)3 SCC 387. It is also true that generally speaking Courts have been reluctant to interfere with the running of educational institutions. But there can be "no islands of insubordination to the rule of law"(1980) 3 SCC 418. The actions of educational institutions, however highly reputed, are not immune from judicial scrutiny. Indeed to preserve the High reputation, there is a greater need to avoid even the semblance of arbitrariness or extraneous considerations colouring the Institution's actions."

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12.4. In M.S.GREWAL Vs. DEEP CHAND SOOD (AIR 2001 SC 3660), the Supreme Court has held as follows:

> "26. Next is the issue 'maintainability of the writ petition' before the High Court under Article 226 of the Constitution. The appellant though initially very strongly contended that while the negligence aspect has been dealt with under penal law already, the claim for compensation cannot but be left to be adjudicated by the Civil law and thus the Civil Court's jurisdiction ought to have been invoked rather than by way of a writ petition under Article 226 of the Constitution. This plea of non-maintainability of the writ petition though advanced at the initial stage of the submissions but subsequently the same was not pressed and as such we need not detain ourselves on that score, excepting however recording that the law courts exists for the society and they have an obligation to meet the social aspirations of citizens since law courts must also respond to the needs of the people. In this context reference may be made to two decisions of this Court. The first in line, is the decision in Nilabati Behera (Smt) alias Lalita Behera (Through the Supreme Court Legal Aid Committee) v. State of Orissa and Others 1993 (2) SCC 746, wherein the Court relying upon the decision in Rudal Sah (Rudal Sah v. State of Bihar & Anr., 1983(4)SCC 141) decried the illegality and impropriety in awarding compensation in a proceeding in which court's power under Articles 32 and 226 of the Constitution stand invoked and thus observed that it was a clear case for award of compensation to the petition for custodial death of her son. It is undoubtedly true however that in the present context there is no infringement of State's obligation unless of course the State can also be termed to be a joint tort-feasor, but since the case of the parties stand restricted and without imparting any liability on the State, we do not deem it expedient to deal with the issue any further except noting the two decisions of this Court as above and without expression of any opinion in regard thereto.

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27. The decision of this Court in D.K. Basu v. State of West Bengal, 1997(1) SCC 416, comes next. This decision has opened up a new vesta in the jurisprudence of the country. The old doctrine of only relegating aggrieved to the remedies available in civil law limits stands extended since Anand, J. (as His Lordship then was) in no uncertain terms observed:

> "The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim - civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family."

28. Currently judicial attitude has taken a shift from the old draconian concept and the traditional jurisprudential system - affectation of the people has been taken note of rather seriously and the judicial concern thus stands on a footing to provide expeditious relief to an individual when needed rather than taking recourse to the old conservative doctrine of civil Courts obligation to award damages. As a matter of fact the decision in D.K. Basu has not only dealt with the issue in a manner apposite to the social need of the country but the learned Judge with his usual felicity of expression firmly established the current trend of 'justice oriented approach. Law courts will lose its efficacy if it cannot possibly respond to the need of the society - technicalities

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there might be many but the justice oriented approach ought not to be thwarted on the basis of such technicality since technicality cannot and ought not to outweigh the course of justice."

12.5. In Zee Tele Films Ltd. And another Vs. Union of India and others (AIR 2005 S.C.2677), the Supreme Court has held that even though the aggrieved party may not have a relief by way of a petition under Article 32, it does not mean that the violator of such right would go scot-free merely because it or he is not a state. Under the Indian Jurisprudence there is always a just remedy for violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law by way of a writ petition under Article 226 of the Constitution of India which is much wider than Article 32.

13. On the contrary, the learned counsel appearing on behalf of the third respondent College has contended that the writ petition is not maintainable, as there is no obligation or a duty cast on the third respondent College to issue the certificates required by the petitioner. All the certificates and the documents, which the third respondent College is obliged to give to the petitioner, as part of the statutory obligation, have already been given and the receipt of which has been acknowledged by the petitioner himself. Further, the petitioner has not impleaded the Pune Christian Medical Association and the M/s.N.M.Wadia Hospital, Pune, as party respondents, even though he has made certain allegations against them. Further, there has been a long delay in coming before this Court and therefore, the writ petition would also be hit by laches.

14. The learned counsel appearing on behalf of the third respondent has pointed out that the writ petition is not maintainable against the third respondent, as held by this court in W.P.No.3773 of 1997, by an order, dated 29.8.1997, after citing the various authorities relating to the issue.

15. Further, the learned counsel appearing on behalf of the third respondent has also pointed out that by an order, dated 30.9.1997, in W.P.No.8840 of 1997, this Court has held that since the petitioner therein was bound by his service obligation, which he had undertaken to discharge at the time of admission to the medical course, the writ petition praying for the issuance of a writ of mandamus could not be issued as prayed for by the petitioner. In the Writ Appeal No.1479 of 1997, filed against the said order, the First Bench of this Court had confirmed the order of the learned single Judge.

16. On a perusal of the records placed before this Court and on an analysis of the rival contentions made on behalf of either parties and based on the decisions cited, it is seen that there is no statutory obligation or a duty cast on the respondents to issue the certificates as required by the petitioner. The petitioner,

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having not fulfilled the service obligations under the agreement and the bond entered into between himself and the third respondent, cannot seek for a remedy as prayed for, invoking the writ jurisdiction of this Court. The third respondent College, admittedly, is an Institution registered under the Societies Registrations Act and, as held by the learned single Judge in W.P.No.8840 of 1997 and confirmed by the Division Bench of this Court in W.A.No.1479 of 1997, the third respondent College is not amenable to the writ jurisdiction as such. Further, it is also seen that there has been a considerable delay on the part of the petitioner in seeking his remedy by way of filing the present writ petition.

17. Even though this Court has wide powers under Article 226 of the Constitution of India to issue any order or direction to any person or authority, it is normally exercised with caution and this Court cannot be like a "bull in a china shop", especially, in view of the fact that the petitioner has not availed of other legal remedies contemplated under the ordinary law of the land. It is further clear that all the documents required to be given to the petitioner, as part of the obligation of the third respondent Institution, have been received by the petitioner as early as 4.3.1991.

18. In such circumstances, this Court is of the considered view that the relief sought for by the writ petitioner cannot be granted. However, it is open to the writ petitioner to seek his remedy before the concerned authority/Appropriate forum in the manner known to law.

With the above observations, the writ petition is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

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+ one cc to Mr. K. Sridhar, Advocate sr no. 5394

MJ(CO)
NM(12.02.07)

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